

SALARIES OF PATROLMEN.

DECISION AGAINST THE POLICE BOARD.
THE COURT OF APPEALS DECIDES THAT SALARIES
CANNOT BE WITHHELD ON ACCOUNT OF SICKNESS.

BY TELEGRAPH TO THE TRIBUNE.

ALBANY, Jan. 31.—The Court of Appeals has handed down a decision in the suit of John Ryan against the Police Commissioners of New-York City. Ryan, who was a patrolman, while sick was deprived of, first, a half and then three-quarters of his salary by the Police Commissioners. The total sum deducted amounted to over \$2,000.

The Board of Police maintained that they had the right by law to make this deduction, owing to Ryan's not performing service as patrolman.

Ryan sued Stephen B. French, the treasurer of the Police Department, for the amount deducted. He will now recover it, the Court of Appeals deciding in his favor. The Court holds that the Board of Police had no authority by law to withhold from Ryan the \$2,000 due him. They state that "although incapable of labor," he had been denied a pension by the Board of Police, and "against his will was retained in office without advantage to the public." The Court is of the opinion that the counsel for the respondent lost nothing by omitting the points brought up in the argument upon the first occasion, and continues in part as follows:

"This result reached us in no respect interferes with the power of the respondents to control the conduct of members of the force to the duties of their office, and is applicable only to a case where the absence of a member is enforced by disease or injury incurred while executing the duties of his office. Such is the case as it stands on the concession in the opening affidavit of the respondent. The statute allows the retirement of a policeman and pension while in office, but the concession of the concession in this case is that of the relator's injury arose 'from or during the ordinary discharge of duty,' in contradistinction, apparently, from such injury as sickness caused by 'inherent propensity or infirmity' or the disease of the force itself. The concession goes beyond the statute. We must adhere to the concession before announced that one of the Special and General Terms be reversed and the writ of mandamus allowed."

The Judge states in support of this opinion that it was contended by the Police Department's lawyers that section 42 of the Act of 1873 was repealed by chapter 389 of the laws of 1878, and that sections 4 and 5 of that act prescribe the only power to pension or retire a police officer. The Judge who wrote the opinion says in respect to this assertion:

"There are in the act no negative words, and it may be inferred as to be consistent with the provisions of section 42 of the Act of 1873. By section 42 a patrolman, 'if disabled while in the actual performance of duty,' can be retired, pensioned, but only by an order of the Board of Police, and upon conditions expressed in that section. A special case is then provided for, and I perceive nothing in the general language of the Act of 1873 which would affect section 389 of the laws of 1878, passed in 1882, provides in substance that the Board of Police may in its discretion retire or dismiss from membership any member of force, and the expenses of such expenses shall be borne by the Board of Police or force or by the person or persons entitled to receive them."

The Judge does not dispose of the case. The relator was neither retired from office nor taken a pension. The respondent conceded that the relator's salary was fixed by statute; that having performed no service during the period for which the salary was claimed, he is not entitled to compensation. His contention now is that the relator's compensation is "not a salary to which he acquires a right by reason of his title to office, but pay for services performed."

That a patrolman receives a "salary" and not merely "pay for service performed," was argued at great length. The entire body of law referring to the Police Department of New-York is gone over to prove this point.

From this it appears that the person sought to be relieved of his post, his position in office to be held by him so long as he performs the duties laid upon it, and to enjoy its salary until by some form of law he is to be married. Then along came his son, a young man, who had been given up in the hope of their respective claims to the authority of use.

If the practice of the Commissioners to make deductions from salaries of a similar character to those now complained of is prevalent, it has been suggested that a enactment of the Legislature by judicial decision, and however general it may have been it cannot be effective to control the true construction of law or impair a plain right given by statute. I can find no record of any such which can be used to sustain the compensation of a patrolman to whom is earned by "actual service" or construed a statute giving him an annual salary during good behavior as we find it in the provision of the law of 1857.

The very plain and great difference in the language of both parts of it. The various acts cited by the counsel for the respondent as recognizing the power referred to relate to the pension and discharge from various sources, out falling short of the case in hand.

The conclusions of the Court are as follows:

"First—The enactment to which I have already referred providing that policemen absent from duty through disability or otherwise should receive a pension 'not less than one-half pay' has not been in terms repealed by any statute to which we have been referred or which I have been able to find.

Second—We now look at the provisions of the acts cited in the case result follows: we nowhere find an intention to deprive the disabled officer of the immunity thus given, or legislative sanction recognition of the process by which the relator was deprived of his pay during sickness and while sent in the police force.

EFFECTS OF THE DECISION.

REGRET EXPRESSED BY POLICE OFFICIALS AT THE DESTRUCTION OF THE PENSION FUND.

Many expressions of disappointment and regret were heard yesterday at Police Headquarters on the receipt of information that the Court of Appeals had handed down a final opinion adverse to the Police Commissioners in the suit of Patrolman Ryan for pay back. John Ryan was appointed a policeman on March 7, 1874, and was assigned to the Twenty-seventh Precinct. In May, 1877, he was stricken with paralysis, and he has been unfit to perform any duty since. He received half pay for a time, but he brought a suit against the Board of Police for full pay on the ground that his paralysis was caused by an injury received in the discharge of his duty. Having been beaten in his suit, he appealed to the General Term, which reaffirmed the decision of the lower court. His counsel then carried the case to the Court of Appeals. After a long delay the Court of Appeals last fall decided in Ryan's favor. The opinion startled the Police Commissioners, because it attacked their power to withhold any portion of the pay of sick policemen. It had been the custom of the Commissioners for years to deduct half the pay of patrolmen while they were sick. Their action had been considered proper as a method of discipline, and to prevent policemen from feigning illness. An application was made for rearguing the case on the ground that some provisions of law had been overlooked. The application was granted and Justice Barrett yesterday refused to grant the writ.

COURT CALENDARS—FEBRUARY 1.

SUPERIOR COURT—CHAMBERS—Held by Judge C. H. Alderman, at 10 a. m., 2nd floor, 214, 215, 200, 302, 303, 306. An assessment calendar will be called.

SURROGATE COURT—Held by Rollins, 8—Contested cases at 8:30 a. m.; motion calendar at 10 a. m.; criminal at 1 p. m.

SUPERIOR COURT—SPECIAL TERM—Held by Ingraham, J.—Contested cases at 8:30 a. m.

COURT OF APPEALS—Held by J. F. Day, J.—No day calendar.

UNITED STATES SUPREME COURT.

WASHINGTON, Jan. 31.—The following business was transacted in the Supreme Court of the United States today:

No. 167—Cassius H. Read, plaintiff in error, agt. City of Pittsfield, N. H.—Argued concluded.

No. 168—Peter T. Kendall, appellant, agt. the United States, vs. Wm. H. Mulligan, plaintiff in error, and others, executors of Mary H. Verpanck, deceased—Argued.

No. 169—Charles H. Marshall and others, appellants, agt. the Steamship Atlantic—Argued begun.

With regard to the exercise by the Post Office Department of any control over the running of trains, Mr. Ingraham said that the Post Office had no right to do this. There is no definition of the status of railroads in their relation to the Government, and great is the sum paid them for annual postage service, it is still not clear that two or three railroads are entitled to the entire earnings of the mail in the United States, and the Department's relation to railroad companies can be considered only as that of a constant customer, and not as a competitor, with other bids. Engineer O'Grady reported that there was only about ten yards of rock excavation, and the contract was awarded to his son. It turned out that the Post Office had given him a bid of \$13,000 more than the work could have been done for Mr. Van Winkle, an engineer, made affidavit to the same facts. These firms have delivered to them, in the same time, nearly \$30,000. Beyond this, the money was remitted, transmitted through the open board none of the firms had any actual connection with the grain trade.

A WESTERN UNION IN KANSAS.

TOPEKA, Kan., Jan. 31.—The Western Union Telegraph Company, composed of Aaron S. Everett, R. P. Waggoner, Francis L. Everett, W. T. Fleming and W. H. Huntington, and others, has an important interest with the corporation of state to-day. The capital stock of the company is \$1,000,000. The persons named are to be the directors for the first year.

THE COURTS.

A CONTRACT OBTAINED BY FRAUD.

Charles Jones recently applied to Justice Barrett, in the Superior Court, Chambers, for a mandamus to compel the Controller to deliver to him a warrant for about \$9,000 drawn in his favor on account of a contract for the construction of a sewer in One-hundred-and-thirty-ninth st., which had been assigned to him by the contractor, James O'Grady.

The Controller opined that he had been preengaged to another and it was not for him to decide whether he was to be married. Then along came his son, a young man, who had been given up in the hope of their respective claims to the authority of use.

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